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In the Supreme Court of the United States

OCTOBER TERM, 1967

DONALD J. ANGELINI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 798

DONALD J. ANGELINI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After petitioner was convicted in the United States District Court for the Northern District of Illinois for failure to register and pay the occupational tax on wagers,[1] a sum of $8,674, which he was carrying on his person at the time of his arrest, was forfeited under 26 U.S.C. 7302 as property intended for use in violation of the Internal Revenue Laws.[2] On ap-

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[1] See *United States* v. *Angelini*, 346 F. 2d 278 (C.A. 7), certiorari denied, 382 U.S. 838.

[2] In pertinent part, 26 U.S.C. 7302 provides:

> It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal

peal from the judgment of forfeiture, petitioner challenged the constitutional validity of the underlying wagering tax laws on the ground that they violate his Fifth Amendment privilege against self-incrimination. The court of appeals, although recognizing that this issue was pending before this Court,[3] affirmed the judgment on the authority of *United States* v. *Kahriger*, 345 U.S. 22, and *Lewis* v. *United States*, 348 U.S. 419 (Pet. App. 4).

We agree with petitioner that the resolution of the self-incrimination issue in the pending cases may have a bearing upon the validity of the forfeiture in this case.[4] The basis of the libel is that the money was "property intended for use in violating the provisions of the internal revenue laws." This Court's determination as to whether the underlying tax statutes are or are not valid can thus affect the right to forfeit property intended for use in violation of such laws.

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revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property.

[3] *Marchetti* v. *United States*, No. 2, this Term; *Grosso* v. *United States*, No. 12, this Term.

[4] Petitioner does not assert, it should be noted, the insufficiency of evidence point raised and resolved against him in the court of appeals (see Pet. App. 2-4).

Accordingly, it would seem appropriate to defer action on the present petition until the *Marchetti* and *Grosso* cases are decided.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1967.

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